

N.D.A.G. Letter to McLean (Aug. 24, 1992)

August 24, 1992

Ms. Jeanne L. McLean
Bottineau County State's Attorney
P.O. Box 26
Bottineau, ND 58318

Dear Ms. McLean:

Thank you for your July 24, 1992, letter concerning the collection of delinquent real estate taxes on real property subject to the lien of a mortgage held by the State Treasurer as trustee for the state of North Dakota.

As you apparently are aware, the lien of the unpaid taxes is subordinate to the lien of the mortgage, and a tax sale of the real property is subject to suspension if the mortgage should be foreclosed and title acquired by the State Treasurer. N.D.C.C. § 57-29-01. Upon the sale and conveyance by the State Treasurer of the real property, the suspension would be lifted and the tax lien could be enforced free and clear of any claims of the State Treasurer. N.D.C.C. § 57-29-02.

Also, during any period of time title to the real property is held by the State Treasurer, payments in lieu of taxes are to be made by the Board of University and School Lands. N.D.C.C. ch. 57-02.3.

At the present time, it appears to me that the county has two alternatives with respect to the collection of the delinquent taxes. The first would be to again initiate tax sale proceedings, with the understanding that if the State Treasurer's mortgage should be subsequently foreclosed, any payments received by the county would be subject to abatement under N.D.C.C. § 57-29-04. The second alternative would be to proceed against the debtors personally. In this regard, you might want to consider bringing an appropriate action in the Bankruptcy Court, based upon the debtors' failure to comply with the order you refer to in your letter. The debtors may be more amenable to negotiating payment of the delinquent taxes if the Bankruptcy Court is aware of the failure to comply with its order.

I hope that this discussion has been of assistance to you. Please let me know if you have further questions regarding this matter.

Sincerely,

Nicholas J. Spaeth

tbl/krb